

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MASSACHUSETTS

MARY SILVA

USDC.C.A.No.

v.

COMMONWEALTH OF MASSACHUSETTS et al
DEFENDANTS,

FILED
IN CLERKS OFFICE
2020 OCT 15 AM 10:38
U.S. DISTRICT COURT
DISTRICT OF MASS.

VERIFIED COMPLAINT:

INTRODUCTION:

Plaintiff Mary Silva files this civil actions for violations of her Federal constitutional rights in the destruction of her property stemming from a unreasonable search or her residence by Defendants that deployed flash bang grenades in her residence sparking a fire, which destroyed her personal property inside the residence and displaced her and her child without a home. Ms. Silva's rights were violated the following day when police used excessive force to take her into custody the following day outside her mother's residence.

JURISDICTION:

Jurisdiction is invoked under 42 USC §1983, and 28 USC §1331, §1343 and pendent jurisdiction of state law claims 28 USC §1367.

PARTIES:

1. Plaintiff Mary Silva, who is a resident and citizen of the Commonwealth of Massachusetts.

2. Defendant Daniel Bennett was the former Secretary of the Executive Office of Public Safety and Security, a political subdivision of the Commonwealth of Massachusetts with an office located at McCormick Building, One Ashburton Place, Suite 2133, Boston Mass. 02108 (hereafter Bennet) He is being sued in his official capacity as Security of Public Safety. Bennet is responsible for the administration and oversight of both the New Bedford Police Department and State Trooper agency. Said responsibilities include but limited to pre-employment screening of prospective management, the hiring and training of officers and state troopers, the preparation and or implementation of policies and procedures governing the duties and performance of supervisory and nonsupervisory personnel and independent contractors, and the safety and security of citizens and their property.

3. Defendant Executive Office of Public Safety is a political subdivision of the Commonwealth of Massachusetts with an office located at McCormick

3. located at the McCormick Building, One Ashburton Place, Suite 2133, Boston Ma 02108, whose subordinates are the New Bedford Police Department and State Trooper agency.

4. Defendant Commonwealth of Massachusetts New Bedford Police Department is an agency of the Commonwealth of Massachusetts with an office located at 871 Rockdale Avenue, New Bedford Ma.02740. The New Bedford Police Department is responsible for safety and security of Massachusetts citizens and upholding the laws of the Commonwealth.

5. Defendant Michael Gomes, former Chief of New Bedford Police Department,, who is responsible for pre-screening of prospective management and police officers, the preparation and or implementation of policies and procedures governing the duties and performances of supervisors and non-supervisors personnel, and independent contractors, the management of the New Bedford police department. He is being sued in his official capacity as former Chief of New Bedford Police Department.

6. Defendant Paul Fonseca is a New Bedford Police Detective, who is responsible for the security and safety of all Massachusetts citizens and upholding Massachusetts State and U.S Federal laws . He is being sued in his individual capacity as a Detective involved in the planning and execution of the search conducted on Plaintiff's residence.

7. Defendant John Doe 1 is the SWAT TEAM Supervisor of the planning and execution of the search on Plaintiff's residence, who is responsible for safety and security of all Massachusetts citizens and upholding Massachusetts and Federal laws. He is being sued in his official and individual capacity as the Supervisor officer on scene.

8. Defendant John Doe 2 is a SWAT TEAM MEMBER Department, who is responsible for the safety and security of all Massachusetts Citizens and upholding of all Massachusetts and Federal laws. He is being sued in his official and individual capacity for the planning and execution of the search of Plaintiff's residence.

9. Defendant John Doe 3 is a SWAT TEAM MEMBER Department, who is responsible for the safety and security of all Massachusetts citizens and enforcement of all Massachusetts and Federal laws. He is being sued in his official and individual capacity as Detective involved in the planning and execution of the search on Plaintiff's residence.

10. Defendant Brock Morrisette is a Massachusetts State Trooper, who is responsible for the security and safety of all Massachusetts citizens. He is being sued in his official and individual capacity as a State Trooper for the planning and execution of the search of Plaintiff's residence that led to the destruction of her property.

11. Defendant John Doe 4 is a Massachusetts State Police Supervisor, who is responsible for the safety and security of all Massachusetts citizens. He is being sued in his official and individual capacity as the Supervisor for the planning and execution of the search of Plaintiff's residence that led to the destruction of her property.

12. Defendant John Doe 5 is a New Bedford Police officer, who is responsible for the safety and security of all Massachusetts citizens. He is being sued in his official and individual capacity as a New Bedford officer for using excessive force during a traffick stop in front of Plaintiff's family's residence.

13. Defendant John Doe 6 is a New Bedford Police officer who is responsible for the safety and security of all Massachusetts citizens. He is being sued in his individual and official capacity as a New Bedford police officer for using excessive force during a traffick stop in front of Plaintiff's family's house.

14. Defendant John Doe 7 is a New Bedford Police officer, who is responsible for the safety and security of all Massachusetts citizens. He is being sued in his individual and official capacity as an New Bedford Police officer for the use of excessive force during a traffick stop in front of Plaintiff's family's house.

15. Defendant John Doe 8 is a New Bedford Police officer in responsible for the safety and security of all Massachusetts citizens and upholding all Massachusetts and Federal laws. He is being sued in his individual and official capacity as the officer assigned to surveillance Plaintiff after leaving the New Bedford Police Station and directing the stop of Plaintiff's vehicle under false pretenses.

16. Defendant John Doe 9 is a New Bedford Police officer, who is responsible for the safety and security of all Massachusetts citizens and upholding all Massachusetts and Federal laws. He is being sued in his individual and official capacity as the assigned officer to surviellance Plaintiff after leaving the New Bedford Police station and directing the stop of Plaintiff's vehicle under false pretenses.

4.

STATEMENT OF FACTS:

17. On or about October 10, 2017, approximately 5:20 p.m. Plaintiff had arrived home unbeknown that her residence at 190 Belleville Road, Apt 1. New Bedford Ma was under surveillance by New Bedford Police. Defendants Morrisette and Fonseca approached Plaintiff in front of her residence and transported her to New Bedford Police station to question her about her boyfriend whereabouts on the earlier morning hour of that day.

18. Purportedly, during the surveillance of Plaintiff's residence, her boyfriend was suspected of having returned to the residence approximately at 5:30 p.m. None of the officer attempted to take him into custody before entering the premises of 190 Belleville Road Apt.1 New Bedford Ma. None of the officers had attempted to ping his phone location as was done earlier that day on October 10, 2017 to confirm that the man thought to be seen entering the premises was actually her boyfriend.

19. According to the Affidavits filed to secure the search warrants on October 10, 2017, Defendants had a parameter set up around the Plaintiff's residence in the event that her boyfriend attempted to flee or otherwise evade capture. Hereto attached as Ex.

20. Defendant Morrisette informed Plaintiff that they had a search warrant for her premises to secure any evidence relating to the homicide that her boyfriend was suspected of and would need her house keys to gain entry. Plaintiff provided her house keys to comply with the search warrant to Defendant. Plaintiff was held at New Bedford Police station while the search warrant was being executed.

21. Defendants Morrisette, Fonseca, John Doe 1-5, along with the New Bedford SWAT team planned and executed a search of Plaintiff's residence. Defendants' did not attempt to confirm Plaintiff's boyfriend presence on the premises during the planning stages to ensure positive identification that the individual believed to had entered earlier actually was Plaintiff's boyfriend to determine the need for flash bang grenades.

22. Defendants' Morrisette, Fonseca, John Doe-15, along with the New Bedford SWAT team had in their possession house keys to Plaintiff's residence, which provided them the element of surprised to announce upon entry into the premises and lessen the need for flash grenades during the planning and execution of the search warrant.

23. On October 10, 2010, approx. 7 p.m. at night, Defendants' Morisette, Fonseca, John Does-1-5 and New Bedford SWAT team deployed flash grenades into Plaintiff's residence, setting her livingroom on fire as they entered the premises. After the initial search the fire had intensified and began to spread throughout the residence that Defendants' had to evacuate the premises until the fire Department arrived to extinguished the place.

24. Plaintiff's boyfriend had not been on the premises and the surviellances placed around the location did not detect anyone fleeing the premises. Defendants had been mistaken to their belief that Plaintiff's boyfriend had entered the residence earlier.

25. Defendants' Morrisette, Fonseca, John Does 1-5 had violated and exceed the terms of the search warrant that limited the search to be conducted in the day time and not at night. These circumstances including the poor planning cited in paragraphs 17-23 herein culminated in an unreasonable and excessive search causing the spark of the fire and destroyed property. Hereto attached as Ex.

26. Consequently, Plaintiff's livingroom furniture consisting two sofa couches, Entertainment Center TV, Bluetooth sound bar, Family photos and son's achievements awards from Young Marines and Karate was damaged as a result of the fire. As a direct result from the spread of the fire and response to exstinguish it by the Fire Department fire, smoke and water damage occurred in the destruction in Plaintiff's son's room consisting of TV and PS4, mattress, clothes and sneakers, and Plaintiff's clothes, sneakers and King size mattress.

27. Defendants Morisette and Fonseca later informed Plaintiff that a small fire had ignited upon breach into her premises without informing her of the cause of the fire. Both Defendants attempted to conceal the reason for the fire in their affidavits for search warrants and deliberately misrepresented the extent of the fire that occurred at the residence in their reports.

28. Subsequently, Plaintiff was excorted to her car and released from New Bedford Police station unbeknownest to her that she remained under police surviellance. Plaintiff stopped by a friend's home and proceeded to her mother's home when she was suddenly stopped by the New Bedford Police officers.

29. Five police cruisers stopped Plaintiff with their revolvers drawn requesting for her to exit the car with her hands up. At the time of the stop, Plaintiff was on the phone face timing with her son. Plaintiff exited the car with her hands up with her phone in hand and complied to the order to walk backwards on her pulled torn ACL injury in fear of being shot. Plaintiff informed the officers that she is unarmed and had just left the police station .

7.

30. Defendants John Doe 6-9 employed excessive force in the stop of Plaintiff and offered her no reasons for the stop. Plaintiff car was visually searched and she was released. The Defendant John Doe 8-9 that maintained surveillance of Plaintiff knew that no one entered her vehicle upon her leaving her friend's home, creating an unlawful stop and search.

31. Plaintiff's son, who witnessed these events while on the phone suffered trauma in the belief that his mother was about to be shot by police in which he receives treatment for Post Traumatic Stress.

32. As a direct results of Plaintiff's property being destroyed and subsequent stop by excessive force, Plaintiff continues to experience post traumatic stress.

CAUSE OF ACTION:

COUNT I: 42 USC § 1983 VIOLATIONS OF THE FOURTH AND EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTIONS

Plaintiff incorporates by reference paragraphs 1-32 herein below:

33. Defendants Morrisette, Fonseca, John Doe 1-5 violated Plaintiff Silva's 4th and 8th amendment rights to the U.S. Constitution in failing to take care in the planning and execution of the search warrant on 190 Belleville Road Apt 1, where Defendants negligently deployed flash grenades despite no one being in the premises, having the house key to enter, and exceeding the search warrant limitations not to be served at night.

34. As a direct and proximate cause of Defendants failures and unnecessary deployment of flash grenades on the premises, Plaintiff Silva suffered damages, including but not limited to, destruction of personal property, displacement, suffering, conscious pain and impairment to earning capacity.

35. As a further results of the Defendants' wrongful conduct, Plaintiff sustain emotional distress, loss of consortium, and other damages.

COUNT II: 42 USC § 1983 VIOLATIONS OF THE FOURTH AND EIGHTH AMENDMENT TO THE U.S. CONSTITUTION

Plaintiff incorporates by reference paragraphs 1-35 herein below:

36. Defendants Morrisette, Fonseca, John Doe 1-5 violated Plaintiff Silva's 4th and 8th amendment right to the U.S. Constitution when conducting a unreasonable search and excessive force to search the premises at 190 Belleville Road. Apt 1 in the deployment of flash grenades.

8.

37. As a direct and proximate cause of Defendants' wrongful conduct Plaintiff suffered damages, including but not limited to personal property damages, conscious pain, suffering, and impairment to earning capacity.

38. As a further result of Defendants' wrongful conduct, Plaintiff sustained emotional distress, loss of consortium and other damages.

39. As a further result of the Defendants' wrongful conduct, Plaintiff sustained economic damages to be determined.

COUNT III. TRESSPASS OF CHATTLE AND CONVERSION OF PERSONAL PROPERTY

Plaintiff hereby incorporates by reference the allegations in paragraphs 1-39 herein below:

40. Defendants Morrisette, Fonseca, and John Doe 1-5 did trespass of chattle and conversion of Plaintiff's property resulting from the unreasonable search, excessive force to enter the premise and negligent care in the planning and execution of the search warrant at 190 Belleville Road, Apt 1.

41. As a direct and proximate cause of the trespass of chattle and conversion, Plaintiff Silva suffered damages including but not limited to personal property caused by the deployment of flash grenades, impairment to earning capacity and emotional distress.

42. As further result of Defendants wrongful conduct, Plaintiff's personal property in her son's and her room was destroyed by fire, soot, and water damages to put the fire out and Silva has sustained economic damages to be determined.

COUNT IV. 42 USC § 1983 CONSPIRACY VIOLATIONS BY DEFENDANTS

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-42 of this complaint herein below:

43. Defendants Morrisette, Fonseca, and John Doe 1-5 did conspire to deprive Plaintiff Silva equal protection right of the law and privileges and immunities to which she is entitled under, the Constitution, and from unreasonable and excessive force under the 4th amendment. When attempting to conceal their wrongful deprivation by omitting the cause of the fire at 190 Belleville Road and extent of damages to Plaintiff's property in their reports to prevent Plaintiff from filing a civil action in further violation of the 1st amendment to the U.S Constitution.

9.

44, As a direct and proximate cause of Defendants conspiracy to deprive Plaintiff of her property by underreporting and omitting facts concerning the causes resulting in Plaintiff's loss of property and displacement of home, impairment of earnings and emotional distress and sustained economic damages to be determined.

COUNT V. 42 USC §1983 MUNICIPALITY LIABILITY AGAINST DEFENDANTS AND THE COMMONWEALTH OF MASSACHUSETTS

Plaintiff hereby incorporates by reference paragraphs 1-44 of this complaint herein below:

45. Michael Gomes, Daniel Bennet, Commonwealth of Massachusetts, through its routine practice of not setting specific criterias for when flash grenades are deployed in citizens homes have allowed for its repeated abuse that led to Plaintiff Silva's property being destroyed by fire, soot and water damages from exstinguishing the fire.

46. As a direct and proximate cause of the routine practice, Plaintiff has suffered damages including but not limited to loss of personal property, emotional distress, impairment of earning capacity.

47. As further result of the Defendants wrongful conduct, Plaintiff has sustained loss of consortium, and other damages in their official capacity, pursuant to 42 USC §1983

COUNT VI. 42 USC § 1983 VIOLATIONS OF THE FOURTH AMENDMENT FIFTH AND FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION

Plaintiff hereby incorporates by reference paragraphs 1-47 of this complaint herein below:

48. Defendants John Doe 6-9 employed excessive force in the unlawful stop of Plaintiff Silva's vehicle outside of her family's home in violation of the 4th, 5th and 14th amendment to equal protection under the law. When Defendant John Doe 8 & 9 ordered Defendants to stop Plaintiff's vehicle knowing that no-one was inside her vehicle from their continued surviellance of her from the police station to her friends house to the eventual stop.

49. As a direct and proximate cause of Defendant's wrongful conduct Plaintiff and her minor son suffered post traumatic stress syndrome and emotional distress.

10.

**COUNT VII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
BY DEFENDANTS**

Plaintiff hereby incorporates by reference paragraphs 1-49 herein below:

50. Defendants John Doe 6-9 did inflict Plaintiff Silva and her son with intentional infliction of emotional distress in the unlawful stop of her vehicle under false pretenses and use of excessive force to secure her without providing any explanation for the reason for the stop and guns drawn on her.

51. The acts of the Defendants were outrageous and extreme beyond all bounds of decency and utterly intolerable in a civilized community.

52. As a direct and proximate cause of the Defendants' wrongful conduct, Plaintiff and her minor son suffered post traumatic stress syndrome, emotional distress, and humiliation and embarrassment.

PRAYERS OF RELIEF:

Wherefor, Plaintiff Silva pray for judgement against the Defendants, jointly and severally, as follows:

1. An Award of compensatory damages in the amount of \$100,000
2. Award of punitive damages and or/exemplary damages;
3. Award of prejudgement interest, reasonable attorney fees, expenses, and cost pursuant to 42 USC § 1988 and other applicable law; and
4. For such other relief as the Court considers just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Silva demand a trial by jury on all accounts.

Dated: September 28, 2020

Respectfully Submitted

Pro-se

Mary Silva

Ms. Mary Silva

749 Purchase St.

New Bedford Ma 02740

VERIFICATION OF COMPLAINT

I, Mary Silva verify that I did read paragraphs 1-52 and to the best of my knowledge they are true and accurate under the pains and penalties of perjury.

Dated: September 28, 2020

Signed

Mary Silva